

HOUSE BILL 429

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2004 Regular Session
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By: **Delegates Morhaim, Anderson, Bronrott, Brown, Cryor, Glassman,
Pendergrass, Walkup, and Wood**

Introduced and read first time: January 29, 2004

Assigned to: Health and Government Operations

A BILL ENTITLED

1 AN ACT concerning

2 **State Government - Administrative Procedure Act - Proposed Regulations**

3 FOR the purpose of requiring agencies to submit proposed regulations to the
4 Department of Legislative Services; prohibiting the Joint Committee on
5 Administrative, Executive, and Legislative Review from approving a request for
6 emergency adoption of a proposed regulation during a certain period unless the
7 Governor makes a certain declaration; requiring the Committee to impose a
8 time limit, not to exceed a certain length, on the effectiveness of emergency
9 regulations; requiring the website of the General Assembly to include certain
10 information about certain emergency regulations the Committee has received;
11 requiring the Department of Legislative Services to maintain a list of members
12 of the public who have requested to receive notice of the Department's receipt of
13 certain emergency regulations; requiring the Department to provide certain
14 notice to certain members of the public; specifying the manner in which the
15 Department shall administer the list; requiring certain promulgating units to
16 provide copies of emergency regulations to members of the public, on request;
17 authorizing the Committee to take certain actions on specific provisions of
18 proposed regulations; and generally relating to the Administrative Procedure
19 Act and proposed regulations.

20 BY repealing and reenacting, with amendments,
21 Article - State Government
22 Section 10-110 and 10-111
23 Annotated Code of Maryland
24 (1999 Replacement Volume and 2003 Supplement)

25 BY adding to
26 Article - State Government
27 Section 10-111.2 and 10-118
28 Annotated Code of Maryland
29 (1999 Replacement Volume and 2003 Supplement)

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - State Government**

4 10-110.

5 (a) This section does not apply to a regulation adopted under § 10-111(b) of
6 this subtitle.

7 (b) At least 15 days before the date a proposed regulation is submitted to the
8 Maryland Register for publication under § 10-112 of this subtitle, the promulgating
9 unit shall submit to the State Children's Environmental Health and Protection
10 Advisory Council established under § 13-1503 of the Health - General Article for
11 review any proposed regulations identified by the promulgating unit as having an
12 impact on environmental hazards affecting the health of children.

13 (c) At least 15 days before the date a proposed regulation is submitted to the
14 Maryland Register for publication under § 10-112 of this subtitle, the promulgating
15 unit shall submit the proposed regulation to the Committee AND THE DEPARTMENT
16 OF LEGISLATIVE SERVICES.

17 (d) (1) The Committee is not required to take any action with respect to a
18 proposed regulation submitted to it pursuant to subsection (b) of this section.

19 (2) Failure by the Committee to approve or disapprove the proposed
20 regulation during the period of preliminary review provided by subsection (b) of this
21 section may not be construed to mean that the Committee approves or disapproves
22 the proposed regulation.

23 (3) During the preliminary review period, the Committee may take any
24 action relating to the proposed regulation that the Committee is authorized to take
25 under §§ 10-111.1 and 10-112 of this subtitle.

26 (e) Prior to the date specified in subsection (b) of this section, the
27 promulgating unit is encouraged to submit the proposed regulation to the Committee
28 and to consult with the Committee concerning the form and content of that
29 regulation.

30 10-111.

31 (a) (1) Except as provided in subsection (b) of this section, a unit may not
32 adopt a proposed regulation until:

33 (i) after submission of the proposed regulation to the Committee
34 for preliminary review under § 10-110 of this subtitle; and

35 (ii) at least 45 days after its first publication in the Register.

1 (2) (i) If the Committee determines that an appropriate review cannot
2 reasonably be conducted within 45 days and that an additional period of review is
3 required, it may delay the adoption of the regulation by so notifying the promulgating
4 unit and the Division of State Documents, in writing, prior to the expiration of the
5 45-day period.

6 (ii) If notice is provided to the promulgating unit pursuant to
7 subparagraph (i) of this paragraph, the promulgating unit may not adopt the
8 regulation until it notifies the Committee, in writing, of its intention to adopt the
9 regulation and provides the Committee with a further period of review of the
10 regulation that terminates not earlier than the later of the following:

11 1. the 30th day following the notice provided BY THE
12 PROMULGATING UNIT under this subparagraph; or

13 2. the [75th] 105TH day following the initial publication of
14 the regulation in the Register.

15 (3) The promulgating unit shall permit public comment for at least 30
16 days of the 45-day period under paragraph (1)(ii) of this subsection.

17 (b) (1) The unit may adopt a proposed regulation immediately if the unit:

18 (i) declares that the emergency adoption is necessary;

19 (ii) submits the proposed regulation to the Committee AND THE
20 DEPARTMENT OF LEGISLATIVE SERVICES, together with the fiscal impact statement
21 required under subsection (c) of this section; and

22 (iii) has the approval of the Committee for the emergency adoption.

23 (2) (i) Subject to subparagraphs [(ii) and (iii)] (II), (III), AND (IV) of this
24 paragraph, the approval of the Committee may be given:

25 1. by a majority of its members who are present and voting
26 at a public hearing or meeting of the Committee; OR

27 2. IF STAFF OF THE COMMITTEE TRIES BUT IS UNABLE TO
28 CONTACT A MAJORITY OF THE MEMBERS OF THE COMMITTEE IN A TIMELY MANNER
29 AND IMMEDIATE ADOPTION IS NECESSARY TO PROTECT THE PUBLIC HEALTH OR
30 SAFETY, by its presiding Chairman OR, IF ITS PRESIDING CHAIRMAN IS
31 UNAVAILABLE, BY ITS CO-CHAIRMAN[; or

32 3. if its presiding Chairman is unavailable, by its
33 co-chairman].

34 (ii) If a member of the Committee requests a public hearing on the
35 emergency adoption of a regulation, the Committee shall hold a public hearing.

1 (iii) 1. If a public hearing is held on the emergency adoption of a
2 regulation, the Committee may not approve the emergency adoption except by a
3 majority vote of the members present and voting at the hearing or at a meeting of the
4 Committee subsequent to the hearing.

5 2. If a vote on the emergency regulation is not taken at the
6 public hearing or immediately thereafter, the Committee members shall be provided
7 at least 1 week's notice of the scheduling of any subsequent meeting to vote on the
8 regulation.

9 (IV) UNLESS THE GOVERNOR DECLARES THAT IMMEDIATE
10 ADOPTION IS NECESSARY TO PROTECT THE PUBLIC HEALTH OR SAFETY, THE
11 COMMITTEE MAY NOT APPROVE THE EMERGENCY ADOPTION OF A REGULATION
12 EARLIER THAN 10 BUSINESS DAYS AFTER RECEIPT OF THE REGULATION BY THE
13 COMMITTEE AND THE DEPARTMENT OF LEGISLATIVE SERVICES.

14 (3) If there is no request for a public hearing, the staff of the Committee
15 may poll, in person, by telephone, or in writing:

16 (i) the members of the Committee; or

17 (ii) if STAFF OF THE COMMITTEE TRIES BUT IS UNABLE TO
18 CONTACT a majority of the members of the Committee [is unavailable] IN A TIMELY
19 MANNER AND IMMEDIATE ADOPTION IS NECESSARY TO PROTECT THE PUBLIC
20 HEALTH OR SAFETY, the presiding Chairman or the co-chairman.

21 (4) (i) The Committee may impose, as part of its approval, any
22 condition[, including a time limit].

23 (ii) THE COMMITTEE SHALL IMPOSE, AS PART OF ITS APPROVAL, A
24 TIME LIMIT NOT TO EXCEED 180 DAYS ON EACH REQUEST FOR EMERGENCY STATUS.

25 (III) If [the Committee imposes a time limit on the effectiveness of
26 the regulation and] the unit does not adopt the regulation finally before the time
27 limit expires, the status of the regulation reverts to its status before the emergency
28 adoption.

29 (5) The Committee may rescind its approval by a majority of its members
30 present and voting at a public hearing or meeting of the Committee.

31 (c) (1) The fiscal impact statement, prepared by the unit and submitted
32 under subsection (b) of this section, shall state:

33 (i) an estimate of the impact of the emergency regulation on the
34 revenues and expenditures of the State;

35 (ii) whether the State budget for the fiscal year in which the
36 regulation will become effective contains an appropriation of the funds necessary for
37 the implementation of the emergency regulation;

1 (iii) if an appropriation is not contained in the State budget, the
2 source of the funds necessary for the implementation of the emergency regulation;
3 and

4 (iv) whether the emergency regulation imposes a mandate on a local
5 government unit.

6 (2) If the emergency regulation imposes a mandate on a local
7 government unit, the fiscal impact statement shall:

8 (i) indicate whether the regulation is required to comply with a
9 federal statutory or regulatory mandate;

10 (ii) if the information may be practicably obtained given the
11 emergency circumstances of the regulations, include an estimate of the impact of the
12 emergency regulation on the revenues and expenditures of local government units;
13 and

14 (iii) if applicable, and if the required data is available, include the
15 estimated effect on local property tax rates.

16 10-111.2.

17 (A) (1) THE WEBSITE OF THE GENERAL ASSEMBLY SHALL INCLUDE A LIST
18 OF ALL EMERGENCY REGULATIONS THE COMMITTEE HAS RECEIVED BUT HAS NOT
19 APPROVED.

20 (2) FOR EACH REGULATION, THE LIST SHALL INCLUDE:

21 (I) THE DATE THE COMMITTEE RECEIVED THE REGULATION;

22 (II) WHETHER A MEMBER OF THE COMMITTEE HAS REQUESTED A
23 PUBLIC HEARING;

24 (III) THE DATE OF ANY PUBLIC HEARING SCHEDULED;

25 (IV) THE DATE AND A SUMMARY OF ANY ACTION THE COMMITTEE
26 HAS TAKEN; AND

27 (V) THE NAME AND TELEPHONE NUMBER OF A MEMBER OF THE
28 COMMITTEE'S STAFF WHO CAN PROVIDE FURTHER INFORMATION.

29 (3) A REGULATION SHALL BE ADDED TO THE LIST WITHIN 5 BUSINESS
30 DAYS AFTER RECEIPT OF THE REGULATION BY THE COMMITTEE AND THE
31 DEPARTMENT OF LEGISLATIVE SERVICES.

32 (B) (1) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL MAINTAIN A
33 LIST OF MEMBERS OF THE PUBLIC WHO HAVE REQUESTED TO RECEIVE NOTICE
34 WHEN THE DEPARTMENT OF LEGISLATIVE SERVICES RECEIVES PROPOSED
35 REGULATIONS FOR WHICH THE PROMULGATING UNIT HAS REQUESTED EMERGENCY
36 ADOPTION.

1 (2) A MEMBER OF THE PUBLIC WHO REQUESTS NOTICE UNDER THIS
2 SUBSECTION SHALL SPECIFY:

3 (I) WHETHER THE INDIVIDUAL WANTS TO RECEIVE NOTICE BY
4 UNITED STATES MAIL OR ELECTRONIC MAIL; AND

5 (II) WHICH AGENCIES' REGULATIONS THE INDIVIDUAL WANTS TO
6 RECEIVE NOTICE OF RECEIPT.

7 (3) WITHIN 2 BUSINESS DAYS OF RECEIPT OF A PROPOSED REGULATION,
8 THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL PROVIDE NOTICE TO MEMBERS
9 OF THE PUBLIC WHO HAVE REQUESTED NOTICE, AS SPECIFIED IN PARAGRAPH (2) OF
10 THIS SUBSECTION.

11 (4) THE DEPARTMENT OF LEGISLATIVE SERVICES:

12 (I) MAY IMPOSE A REASONABLE FEE FOR SENDING NOTICE UNDER
13 THIS SUBSECTION BY UNITED STATES MAIL; AND

14 (II) MAY NOT IMPOSE A FEE FOR SENDING NOTICE UNDER THIS
15 SECTION BY ELECTRONIC MAIL.

16 (5) UPON REQUEST, A PROMULGATING UNIT SHALL PROVIDE COPIES OF
17 EMERGENCY REGULATIONS TO MEMBERS OF THE PUBLIC.

18 10-118.

19 AFTER A PUBLIC HEARING ON A PROPOSED REGULATION, THE COMMITTEE
20 MAY APPROVE, DENY A REQUEST FOR EMERGENCY STATUS FOR, OPPOSE ADOPTION
21 OF, OR REQUEST A PROMULGATING UNIT TO DELAY ADOPTION OF SPECIFIC
22 PROVISIONS OF PROPOSED REGULATIONS.

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
24 effect October 1, 2004.